

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL CASE NO.  
CCB-14-0121

ARTHUR JETER,

Defendant

/

(Motions Hearing)  
Friday, September 19, 2014  
Baltimore, Maryland

Before: Honorable Catherine C. Blake, Judge

Appearances:

On Behalf of the Government:  
Matthew K. Hoff, Esquire  
James Wallner, Esquire

On Behalf of the Defendant:  
Brendan A. Hurson, Esquire

Reported by:  
Mary M. Zajac, RPR, FCRR  
Fourth Floor, U.S. Courthouse  
101 West Lombard Street  
Baltimore, Maryland 21201

1 (Proceedings at 9:43 a.m.)

2 MR. HOFF: Calling United States versus Arthur Jeter,  
3 Criminal Docket Number CCB-14-0121. Matthew Hoff, Special  
4 Assistant United States Attorney, on behalf of the government.  
5 To my left is James Wallner, Assistant United States Attorney.  
6 And to the left of him is Michael Glenn of the Baltimore Police  
7 Department, Your Honor.

8 THE COURT: All right. Thank you.

9 MR. HURSON: Good morning, Your Honor. Brendan Hurson  
10 on behalf of Mr. Jeter. And I'm joined by my investigator, Mr.  
11 Kanwisher.

12 THE COURT: All right. Thank you all very much. So  
13 we're continuing the hearing on Motions to Suppress. I believe  
14 the government's calling another witness?

15 MR. HOFF: Yes, Your Honor. Call Detective Mike Glenn.

16 THE COURT: All right.

17 DETECTIVE MICHAEL GLENN, GOVERNMENT'S WITNESS, SWORN

18 THE WITNESS: I do, ma'am.

19 THE CLERK: Please be seated. Please speak directly  
20 into the microphone. State your full name for the record and  
21 spell your last name, please.

22 THE WITNESS: Yes, ma'am. My name is Michael Darin  
23 Glenn. Last name is spelled G-L-E-N-N, just like the astronaut.

24 THE COURT REPORTER: Could you spell your middle name,  
25 please?

1 THE WITNESS: D-A-R-I-N, ma'am.

2 MR. HOFF: May I, Your Honor?

3 THE COURT: Go ahead.

4 DIRECT EXAMINATION

5 BY MR. HOFF:

6 Q Detective Glenn, are you the task force officer assigned to  
7 the case involving Mr. Arthur Jeter?

8 A I am, sir.

9 Q And did there come a point in time in relation to this case  
10 that you went to the Baltimore City Detention Center?

11 A Yes, sir.

12 Q And why did you do that?

13 A To ascertain if Mr. Jeter had a cell phone in his property.

14 Q And why did you believe there may be a cell phone in Mr.  
15 Jeter's property?

16 A I checked the Baltimore City Police Evidence Control  
17 Section, found that there was no cell phone submitted by the  
18 detectives in this case. My next course of action was to respond  
19 to the Baltimore City Detention Center to see if Mr. Jeter had  
20 his cell phone in his property.

21 Q When was that?

22 A That was on February 20th, 2014.

23 Q And what, if anything, happened when you were there?

24 A I spoke to a lieutenant there briefly and asked if I could  
25 ascertain what property Mr. Jeter had.

1 Q Did you receive a response?

2 A I did.

3 Q What was that?

4 A At this time this institution is under severe scrutiny, and  
5 that we are not giving out any information unless there was a  
6 court document or a subpoena to get that information.

7 Q And what did you do in response to that?

8 A I contacted you, sir.

9 Q What, if anything, happened after that?

10 A A subpoena was issued for any and all property for Mr.  
11 Arthur Jeter to the Baltimore City Detention Center.

12 Q Do you know what date that was?

13 A That was the same day, February 20th.

14 Q In the past, have you been able to obtain information from  
15 Baltimore City Detention Center in reference to property?

16 A Yes, sir, I have.

17 Q And how have you, how have you obtained that information?

18 A Usually, I just, I can basically make a phone call and call  
19 over and obtain the property listing, at least a listing of what  
20 the property is.

21 Q And did you make that phone call in this case?

22 A I did not.

23 Q Could you have made that phone call in this case?

24 A I could have. I don't know what the outcome would have  
25 been. But I could have continued to make a phone call.

1 Q Did the subpoena have a compliance date?

2 A Yes, sir. The compliance date was March 6, 2014.

3 Q And do you know when the defendant was indicted?

4 A Mr. Jeter was indicted on March 13th, 2014, sir.

5 Q Did there come a point in time when you went back to the  
6 Baltimore City Detention Center?

7 A Yes, sir.

8 Q When was that?

9 A That was May 28th, sir.

10 Q Why did you go back?

11 A I received information that, on the 22nd of May, that the  
12 property would be available to be picked up on the 28th, of 2014;  
13 that Mr. Shields, from Baltimore City Detention Center, would  
14 have that property available for me in lieu of the grand jury  
15 subpoena.

16 Q And did you go back to BCDC on February the 28th of 2014?

17 A I did, sir.

18 Q And what happened?

19 A Mr. Shields, who the property has to be released by, was  
20 attending a funeral.

21 Q So were you able to obtain it then?

22 A I was not, sir.

23 Q And what did you do then?

24 A I went back on the morning of the 29th, sir.

25 Q Were you able to retrieve anything at that time?

1 A Yes, sir. Received the property from Arthur Jeter.

2 Q Why did you go back to retrieve the property?

3 A To see if Mr. Jeter had a cell phone in that property.

4 Q What was your intent?

5 A If he had a cell phone, obtain a search and seizure warrant  
6 for that cell phone.

7 Q And what did you do with the property when you retrieved it  
8 from BCDC?

9 A I responded back to my office, opened the property up and  
10 photographed it, and then placed it in ATF evidence.

11 Q When you say "opened the property up", what do you mean?

12 A It was a property bag, and it was closed.

13 Q After you took photographs of it, did you, what did you do  
14 with it?

15 A Placed it in ATF Property.

16 Q Did you, was there a cell phone in there?

17 A It was.

18 Q Did you turn on the cell phone?

19 A I did not, sir.

20 Q Did you use the cell phone?

21 A I did not, sir.

22 Q Did there come a point in time when you went back to the ATF  
23 evidence a second time?

24 A Yes, sir.

25 Q And when was that?

1 A I believe it was June 18th, sir.

2 Q Of 2014?

3 A 2014, yes, sir.

4 Q And why did you go back?

5 A To obtain information to obtain a search warrant for the  
6 cell phone.

7 Q When you say "obtain information", what do you mean?

8 A Obtain information regarding the cell phone: The color, the  
9 name brand, the serial number, and so forth and so on, sir.

10 Q When you went back -- to obtain that information, did you  
11 need to turn on the phone?

12 A No, sir.

13 Q Did you need to use the phone?

14 A No, sir.

15 Q After you obtained that information, what did you do?

16 A I obtained a search and seizure warrant. Basically wrote a  
17 search and seizure warrant up for that information, for that  
18 specific, for that phone.

19 Q And what date was that?

20 A The search and seizure warrant was obtained on the 23rd,  
21 sir.

22 Q Was the search and seizure warrant executed?

23 A Yes, sir. The search and seizure warrant was executed on  
24 the 23rd -- sorry. Obtained the search and seizure on the 23rd  
25 of June. It was executed on the 24th of June.

1 Q And throughout this process, was it always your intent to  
2 obtain a search and seizure warrant for that phone?

3 A Yes, sir. If there was a phone in there, I was going to  
4 obtain a search and seizure warrant for it.

5 Q As far as the execution of the search and seizure warrant,  
6 who did that?

7 A It's an ATF agent, Troy -- I can't pronounce his last name.  
8 Cafal -- I'm sorry.

9 Q Troy Dannenfelser, sir?

10 A Dannenfelser. Yes, sir.

11 Q Why did he execute this search and seizure warrant?

12 A He has technical experience and he has the ability to  
13 retrieve the information from a cell phone.

14 Q May I have the Court's indulgence, Your Honor?

15 (Pause in proceedings.)

16 Q So throughout the time when the cell phone came into your  
17 possession, from the time the, from, to the time that the warrant  
18 was executed, was the cell phone ever utilized or turned on?

19 A No, sir.

20 Q Was it ever, did you ever look through the phone at any  
21 point in time?

22 A No, sir.

23 Q I have no further questions, Your Honor.

24 THE COURT: Thank you. Mr. Hurson.

25 CROSS EXAMINATION



1 BY MR. HURSON:

2 Q Thank you, Your Honor. Detective -- is it Detective?

3 A Yes, sir. It's Detective.

4 Q Detective Glenn, you said you called February 20th, 2014,  
5 you called BCDC?

6 A No, sir, I did not call BCDC.

7 Q Okay. I'm sorry. You went there?

8 A I responded to Baltimore City Detention Center. Walked into  
9 the, actually, Baltimore City Detention Center Central Booking  
10 Intake Facility, part of Baltimore City Detention Center. Walked  
11 in and spoke to the lieutenant behind the desk.

12 Q You said -- I'm confused. You said "responded." Nobody  
13 from there called you. You just went over there?

14 A Yes, sir. I went to the Central Booking Intake Facility  
15 down in Baltimore.

16 Q And to be clear, nobody would give you any information about  
17 what property was in their possession that may have belonged to  
18 Mr. Jeter, correct?

19 A That's correct, sir. The lieutenant behind the desk stated  
20 she would not give me the property, or a listing of what he had.

21 Q Did you write the grand jury subpoena in this case?

22 A I did not, sir.

23 Q Do you know who did?

24 A I do, sir.

25 Q Who was it?

1 A Mr. Hoff, sir.

2 Q Okay. Did you tell him what to write?

3 A No, sir.

4 Q The name on the grand jury subpoena is a specific  
5 individual, correct?

6 A That's correct, sir.

7 Q And is that, did you ever talk to that person?

8 A I have not talked to him, no, sir.

9 Q Okay. So that was not the person who called you from the  
10 jail to tell you that the property was ready to be picked up in,  
11 I think you said, May?

12 A Yes, sir. Actually, Mr. Hoff contacted me, along with Mr.  
13 Shields, who was a correspondent. Mr. Shields was the one who  
14 contacted me saying that the property was ready for pickup.

15 Q The search warrant affidavit that you signed, you did type  
16 that, correct?

17 A Yes, sir.

18 Q And you don't have a copy of that with you right now, do  
19 you?

20 A I don't, sir.

21 Q I'm going to ask you a few questions about it. Would it  
22 help you if you had a copy of it?

23 MR. HOFF: Objection, Your Honor.

24 THE COURT: Why?

25 MR. HOFF: Well, Your Honor, at this point, as far as

1 getting into the warrant, I don't think that's a focus of this  
2 particular motion at this time. I think that the --

3 THE COURT: Well, let's see what the questions are.  
4 And go ahead, if you would, Mr. Hurson, give him a copy.

5 MR. HURSON: I'm going to approach. I have some  
6 exhibits for my own witness, Your Honor. They go up to 20. So  
7 I'm going to call this 21, for identification only.

8 THE COURT: Okay.

9 BY MR. HURSON:

10 Q For the record, I think a copy of the search warrant's  
11 already in the court record as an attachment to one of the  
12 filings.

13 Is that -- in front of you, that's the search warrant  
14 affidavit that you completed and a copy of the warrant, correct?

15 A Yes, sir.

16 Q The warrant itself makes reference to a model of telephone.  
17 How did you find out what the model of the telephone was?

18 A Once I obtained the property from BCDC, opened up the  
19 property bag, got the model of the telephone.

20 Q And how did you determine the make of the telephone?

21 A The make was on the outside of the phone, sir.

22 Q And there's an FCC ID number referenced in your warrant  
23 application and in the warrant. How did you obtain that?

24 A By observing the phone, sir. Just looking at the phone.

25 Q And you actually had to take the battery off for that,

1 correct?

2 A I believe so, sir.

3 Q And the same is true with the ME ID number?

4 A Yes, sir.

5 Q What is that?

6 A It's one of the numbers on the, on that little silver card  
7 on the back where the battery's located. Underneath the battery,  
8 sir.

9 Q So you actually had to take the phone apart and take the  
10 battery off in order to get that number, correct?

11 A Yes, sir.

12 Q And you, as the task force officer in this case, are aware  
13 of when individuals testified before the grand jury, correct?

14 A Yes, sir.

15 Q And so you know that the confidential informant in this case  
16 testified in December of 2013, correct?

17 A Yes, sir.

18 Q And you're aware of the sum and substance of his testimony,  
19 correct?

20 A I wasn't inside the grand jury when he testified, sir.

21 Q Of course not. But you certainly met with him before his  
22 testimony, right?

23 A Yes, sir.

24 Q So you knew that a cell phone may have been involved in this  
25 case in December, correct?

1 A Yes, sir.

2 Q And when I say a cell phone may have been involved, that  
3 there may have been communications between the CS and Mr. Jeter.  
4 You knew that in December of 2013?

5 A Yes, sir.

6 Q And, in fact, you are aware that a grand jury subpoena for  
7 the cell phone records of the CS was executed in December of  
8 2013, correct?

9 A Yes, sir.

10 Q And you actually got those records back in December of 2013,  
11 correct?

12 A Yes, sir.

13 Q And was it your responsibility to serve the subpoena for Mr.  
14 Jeter's property at BCDC?

15 A On some occasions, sir, I can serve it, or it's been  
16 practice where the U.S. Attorney's Office can send a fax over as  
17 well.

18 Q So the subpoena was actually faxed. Do you know how the  
19 subpoena in this case was served?

20 A It was faxed to the Baltimore City Detention Center, sir.

21 Q Okay. And did you send that fax?

22 A I did not.

23 Q Do you know who did?

24 A Mr. Hoff did.

25 Q And at any point did you call the Detention Center and ask

1 for a follow-up on where they were with complying with the  
2 subpoena?

3 A I did not, sir.

4 Q No further questions, Your Honor.

5 THE COURT: Any redirect?

6 MR. HOFF: No, Your Honor. No redirect.

7 THE COURT: Thank you very much. You can step down.

8 THE WITNESS: Thank you, Your Honor.

9 MR. HURSON: Your Honor, this is already, I think -- I  
10 can move it into evidence or the Court can use it as attachment.  
11 Ever whichever is easier. I think it's an attachment to the  
12 file.

13 THE COURT: I think it's already in. That's fine.

14 MR. HURSON: Okay.

15 THE COURT: Any other evidence on the government's  
16 side?

17 MR. HOFF: No, Your Honor.

18 THE COURT: Mr. Hurson?

19 MR. HURSON: Your Honor, I'm going to call Mr.  
20 Kanwisher.

21 THE COURT: All right.

22 MR. HOFF: Your Honor, just before Mr. Kanwisher  
23 testifies, the government would object on the record. At the  
24 prior motions hearing, Mr. Hurson asked if Mr. Kanwisher could  
25 sit at the trial table, indicating that he was not going to be a

1 witness in these motions hearings. He's had the benefit of  
2 sitting at the trial table and hearing all the testimony and now  
3 he is going to be testifying, I guess in, I guess rebuttal to the  
4 testimony that was provided previously. That would be the  
5 objection by the state, or by the government. Apologize, Your  
6 Honor.

7 THE COURT: Well, since at the time that representation  
8 was made at the initial motions hearing, it apparently was not  
9 your plan, and indeed you did not call TFO Glenn, to the stand.  
10 This came about much more recently. So I certainly wouldn't bind  
11 the defense to that initial representation.

12 And in any event, Mr. Kanwisher's a professional  
13 investigator. It's sort of like having your case agent here.  
14 I'm not declaring that as a policy for future cases, but I  
15 certainly don't think there's a reason to keep him from  
16 testifying. Under these circumstances.

17 MR. HOFF: I understand, Your Honor. I think the basis  
18 of the testimony is not related to Detective Glenn's testimony.  
19 I think it's in relation to the prior testimony from all the  
20 police officers and Mr. Martin. That would be the reason for the  
21 objection, Your Honor.

22 MR. HURSON: That is absolutely correct. I want to  
23 make it clear what he's going to testify to. And I'll just  
24 proffer it.

25 THE COURT: Go ahead.

1           MR. HURSON: On Wednesday -- and it's true. Based on  
2 the testimony that was heard last week, Mr. Kanwisher and I and  
3 another investigator went out and took some film from the scene,  
4 pictures from the scene to help Your Honor in deciding the  
5 motion. It's absolutely true that the information that was  
6 learned at the motions hearing was a significant part of the  
7 basis for what we did. Specifically, we stood in the places  
8 where witnesses said they stood. We filmed from the perspective  
9 of witnesses. We actually reenacted some of the events that were  
10 testified to. And I completely agree, we wouldn't have known  
11 that before.

12           But I think it's important to note that one of the  
13 reasons we wouldn't have known that before is because the police  
14 report in the case was written in a manner which was intended to  
15 hide, for whatever purpose, good or bad, the facts of the case.  
16 There were no police reports written. There was nothing  
17 preserved.

18           I would say that, ordinarily, the practice would be  
19 that I would relay that information to an investigator who was  
20 not present. And then they would come in and say, Did you have a  
21 conversation with me? Yes. Did I tell you this? So I don't  
22 know that there's any sort of unfair advantage. If anything, it  
23 actually makes it that much clearer because Mr. Kanwisher and I  
24 were able to specifically reenact precisely what the officers  
25 said happened.



1           We did it, as I'll ask Mr. Kanwisher, because we think  
2           it might be helpful to you to know and see the area in a manner  
3           that's different than just an aerial map from Google Maps. If  
4           it's not, you're certainly free to disregard all of it.

5           What we have is about 20 minutes of pictures from the  
6           various perspectives of the individuals involved. And we have  
7           some video that is both the perspective of Detective Hill from  
8           her vantage point at the corner of Fairmont and Kenwood. We also  
9           have a reenactment of exiting Number Seven, going to where the  
10          vehicle of Mr. Martin was supposedly parked, as well as a  
11          reenactment of driving from Streeper Street to the area where the  
12          officers testified they stopped the car, or pulled up behind the  
13          car.

14          And it's based on the testimony. Of course, the Court  
15          can give it whatever weight it wants to.

16          I don't intend to play the whole video. I was going  
17          to, I was just going to submit it to Your Honor. It's about  
18          eight minutes long. And we have about 20, maybe 15 pictures or  
19          so.

20          We also found a Mercury Mark VIII of the same year and  
21          model, because I know there was a lot of testimony about what the  
22          car looked like and where people were. We actually found one.  
23          And Mr. Kanwisher was able to go out and take a look at it and  
24          take some pictures. We just thought it might be helpful. He's  
25          not --

1 THE COURT: I see.

2 MR. HURSON: -- testifying to anything other than that.

3 THE COURT: Well, just a few comments first. But it  
4 obviously would have been helpful for me to know in advance what  
5 he was going to testify about, that there was more to it. I  
6 assumed, as you just gathered from my comments, that it related  
7 to the inevitable discovery issue.

8 Having said that, I also think this is a fairly unusual  
9 case. And I do recall from the last motions hearing that I think  
10 defense counsel reasonably indicated that he was surprised.  
11 Learned a lot of information at the motions hearing that had not  
12 previously been disclosed. Again, I'm not saying that's good or  
13 bad. And we heard why the affidavit was written the way it was  
14 written.

15 So given the seriousness of the case and these  
16 particular circumstances, I'm going to let you present the  
17 evidence. Whether or not it turns out to be helpful is another  
18 question. And I'll certainly keep in mind Mr. Hoff's point, that  
19 Mr. Kanwisher obviously was sitting here, listening to the  
20 testimony when we were here before.

21 MR. HURSON: I apologize. When we were on the  
22 conference call, you said I could present new evidence. I took  
23 that to mean writ large. I'm sorry. That's my fault.

24 THE COURT: I meant in response to whatever the  
25 government might be putting on today. But go ahead. Let's get

1 the pictures into evidence.

2 MR. HURSON: Great.

3 WILLIAM KANWISHER, DEFENDANT'S WITNESS, SWORN

4 THE WITNESS: I do.

5 THE CLERK: Please be seated. Please speak directly  
6 into the microphone. State your full name for the record and  
7 spell your last name, please.

8 THE WITNESS: Yes, ma'am. William Walter Kanwisher.  
9 Last name is K-A-N-W-I-S-H-E-R.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. HURSON:

13 Q Mr. Kanwisher, where are you employed?

14 A Federal Public Defender's Office.

15 Q And how long have you worked there?

16 A Worked there nine years.

17 Q And are you assigned to the Arthur Jeter case?

18 A Yes. I am the assigned staff investigator to that case.

19 Q And you were in court on, last week, during a motions  
20 hearing in this case, correct?

21 A I was in court last Friday for the motions hearing, correct.

22 Q And after that motions hearing, we went out to Kenwood  
23 Street (sic), right?

24 A We did. We went out last Wednesday, and I believe the day  
25 was September 17th.

1 Q So why did we, why did you do that?

2 A Well, we had learned a lot of information last Friday,  
3 particularly and most importantly about the placement of  
4 individuals, their observations, the timing, the circumstances.  
5 And we had not had that information prior to that and were unable  
6 to investigate it. So we believe -- first of all, we wanted to  
7 educate ourselves as to those particular issues. But as we got  
8 out there, we realized that there may be a chance to be helpful  
9 to the Court in terms of producing some exhibits that may give  
10 some context to the testimony that was heard last Wednesday, or  
11 last Friday.

12 Q And what day -- you keep saying "we." Who went with you?

13 A You were there. And another staff investigator, Joseph  
14 Segreti, was also there.

15 Q And what day did we go?

16 A I think it was last Wednesday, two days ago.

17 Q And why did we go on a Wednesday?

18 A Well, as we found out when we looked into it, the October  
19 23rd, 2013 date was also a Wednesday. We're also approximately  
20 in the same season. We're about a little more than a month away  
21 from October 23rd. So the conditions, we wanted to approximate  
22 as close as we could the conditions that were occurring on  
23 October 23rd, 2013.

24 Q And what time did we go?

25 A Again, our understanding was that the events took place

1 basically between noon and two. We went out there -- the most  
2 important events seemed to take place between one and two. We  
3 arrived probably a little before one and we were finished  
4 sometime after 1:30.

5 Q I show you what's previously been marked as Defendant's  
6 Exhibit 6. Do you recognize this?

7 A Yes. It's an aerial view of the North Kenwood Avenue area,  
8 the unit block. Also shows Baltimore Street, Fairmount, Belnord,  
9 and Streeper as well.

10 Q And you remember the testimony of Detective Hill, correct?

11 A Yes, I do.

12 Q And were you able to find, to stand in the approximate  
13 location that Detective Hill said she was standing in on October  
14 the 23rd, when she made observations of Mr. Jeter and Mr. Martin?

15 A That's correct. I was able to approximate where it was.  
16 She had described an angle-in parking right, as I understood it,  
17 below the crosswalk below, actually, that would be north of  
18 Fairmount, actually parked on Kenwood.

19 Q Okay. I'm going to show you -- can you mark on the screen  
20 where that was that you stood?

21 A About right there (indicating).

22 Q Okay. I'm showing you Defendant's Exhibit Seven. What is  
23 this?

24 A It's a photograph that was taken Wednesday. It's a  
25 photograph from Seven North Kenwood. This would be looking

1 north, towards the spot where Officer Hill had been or had  
2 testified to be on October 23rd, 2013.

3 Q I'm showing you Defendant's Exhibit Eight. What's that?

4 A It's a very similar photograph, standing, again, on the  
5 steps of Seven North Kenwood, looking north towards Fairmount.

6 Q And now I'm showing you Defendant's Exhibit Number Nine.  
7 What is that?

8 A This is a view from Kenwood and Fairmount. The cross street  
9 that you can see there is Fairmount. The angle is looking south  
10 towards Seven North Kenwood.

11 Q Now, were you able to make any observations about where  
12 number Seven North Kenwood is on that block?

13 A Yes. There's an alley there. And if you go four houses  
14 north, that would be Seven North Kenwood.

15 THE COURT: Where on this picture, which is, what?  
16 Defendant's Exhibit Nine?

17 THE WITNESS: I'm sorry, Your Honor?

18 THE COURT: On this picture.

19 BY MR. HURSON:

20 Q I'm actually going to approach with Exhibit Number Nine.  
21 Can you mark on Exhibit Number Nine approximately where Number  
22 Seven is? You can do an arrow.

23 A It's a little difficult because of the foliage and the cars.  
24 But I can try to approximate it with an arrow.

25 Q Here's Defendant's Six, if this is helpful.

1 A Yes. I think that might be the better view. So from the  
2 alley, counting one, two, three, four, it would be about right  
3 there (indicating).

4 Q Are you able to make a mark?

5 A I can, but it's not very legible, I have to say. I'm not  
6 sure it's as precise as the Court would like. I think the aerial  
7 photo might be better.

8 Q Here's Defendant's Six. Showing where Number Seven is?

9 THE COURT: And what is it that's indicating Number  
10 Seven?

11 Q This black or, these two lines here.

12 A Also, Your Honor, you see the red icon, guess I would call  
13 it there.

14 THE COURT: Yes.

15 THE WITNESS: That is right where it is.

16 THE COURT: Okay. By the red icon.

17 BY MR. HURSON:

18 Q Mr. Kanwisher, Number Nine you made a mark here. That's  
19 pointing approximately where Number Seven is, is that correct?

20 A It's approximate. It's very hard to see through the  
21 foliage. But it's, yeah, it's, that's approximately where it is.

22 THE COURT: The mark, again, perhaps I could see the --

23 MR. HURSON: I'll bring up the original, Your Honor, if  
24 you'd like.

25 THE COURT: Thank you. All right. Thank you.

1 BY MR. HURSON:

2 Q I left off on number, I think it was Number 10. This is  
3 Defendant's Exhibit 10. And what's this, Mr. Kanwisher?

4 A This is a photograph depicting the view from the corner of  
5 Kenwood and Fairmount, again looking north towards Seven North  
6 Kenwood. This is the approximate position, as I understood it,  
7 that Officer Hill described her observation point to be.

8 Q This is --

9 THE COURT: Okay. I'm confused. We're now supposedly  
10 where Officer Hill was. We're looking south or north?

11 MR. HURSON: I think he actually said north, Your  
12 Honor. He meant to say -- I'm sorry. Mr. Kanwisher --

13 THE WITNESS: I'm sorry. Yes, that was my mistake.  
14 We're looking south.

15 THE COURT: South. Okay. Number Nine. Okay.

16 THE WITNESS: Yes. Thank you for catching that.

17 BY MR. HURSON:

18 Q It may be helpful zooming in a little bit. You can actually  
19 see the -- can you see the change in row houses in the --

20 A I'm not trying to be difficult, but if you count down one,  
21 two, three, four, it's about as far as I'm counting, I think  
22 that's right. One, two, three four. It's the fourth house down  
23 from the alley. I think that's it.

24 Q Okay. This is very similar. This is Defendant's 11.  
25 What's this?



1 A It's a very similar view. You're at Kenwood and Fairmount,  
2 again looking -- make sure I'm right -- south towards Seven North  
3 Kenwood.

4 Q Now, there was, was there a time when you actually went and  
5 stood on the steps of Seven North Kenwood?

6 A Yes, sir.

7 Q And where was I when you stood on the steps of Seven North  
8 Kenwood?

9 A Well, you were in the area. I can't remember exactly where.  
10 But there was -- are you speaking of our attempts to recreate  
11 certain aspects?

12 Q Yeah. I'm show you Defendant's 12.

13 A Yes.

14 Q And who took Defendant's 12?

15 A I believe that's your photograph.

16 Q And where are you in this picture?

17 A I am -- yeah, please. I think I'm on the steps. It's hard  
18 to see.

19 Q Do you remember --

20 A I remember being there, yeah.

21 Q -- being on the steps of Seven North Kenwood?

22 A Yes. Yes, absolutely.

23 Q Like you said, I took this picture, correct?

24 A Yes.

25 Q But this accurately reflects the area on Wednesday, correct?

1 A Yes, it does.

2 Q And were you able to make any measurements in between the  
3 spot that Detective Hill was standing and the steps of North  
4 Kenwood?

5 A Yes. This is what I did, Your Honor. I had a measuring  
6 wheel. And I started at Seven North Kenwood and I walked in as  
7 direct a way as I could to the spot where I understood Officer  
8 Hill to have been observing. And I went down there all the way  
9 to that spot, which was just a little bit beyond the crosswalk  
10 that's depicted in the photographs. And then I turned the wheel  
11 around and recalibrated it to zero and walked back again to the  
12 steps at Seven North Kenwood.

13 Q And what was the distance that you, the wheel indicated  
14 between number Seven North Kenwood's steps and the location that  
15 Detective Hill said she was in?

16 A The wheel isn't the most precise instrument. So the first  
17 time down, when I was walking towards Officer Hill, was 280 feet.  
18 And then coming back the other direction was 284 feet.

19 Q Can you switch to the computer terminal? Mr. Kanwisher, I'm  
20 showing you the beginning of Defendant's 20?

21 A Yes, sir.

22 Q And did you take some video when you were out there on  
23 Wednesday?

24 A Yes, I did.

25 Q And I took some, too, correct?

1 A You did.

2 Q One of the videos you took was you walking from the steps to  
3 where Detective Hill was located, correct?

4 A Right. That was -- yes. And that was just me pacing the  
5 distance. This is before I had actually used the wheel. So this  
6 was just myself holding a video camera at eye level and walking  
7 to the spot and then walking back.

8 Q And that's what is at the beginning of Defendant's Exhibit  
9 20, is that correct?

10 A Yes, I think so.

11 Q As the video's playing, do you remember how many trees you  
12 remember counting between Exhibit Seven and the spot Detective  
13 Hill was in?

14 A Well, I believe it was, it was six. It may have been as  
15 many as eight. Actually, we can count them together. One, two,  
16 three, four, five, -- certainly five. And there may have been  
17 more. But the video speaks for itself. It shows you the degree  
18 and the amount of foliage that existed.

19 MR. WALLNER: Objection, Your Honor. Can we stop the  
20 editorializing?

21 THE COURT: Shows the degree and amount of foliage?

22 BY MR. HURSON:

23 Q And you're coming up on what in the video, Mr. Kanwisher?

24 A Coming up on the corner of Kenwood and Fairmount. Fairmount  
25 is the cross street. I think there might be some traffic here.

1 I'm not sure. Yep.

2 And then my understanding was that Officer Hill was  
3 parked just beyond the crosswalk, so right there. So I got to  
4 the crosswalk, took a couple of steps forward, and then just  
5 reversed.

6 Q Okay. To be clear, you also brought binoculars with you,  
7 right?

8 A Yes. Correct.

9 Q And do you remember the magnification power of binoculars?

10 A I believe it was a 7 times 50 power.

11 Q And when you used -- you used the binoculars from the point  
12 of view where Detective Hill was, correct?

13 A I did.

14 Q And you aimed the binoculars at Number Seven, right?

15 A I did.

16 Q And what could you see as far as the steps of Number Seven?

17 A Well, Your Honor, the problem was the obstructions. And  
18 between the cars and mostly the trees, it was difficult to even  
19 see it at all, notwithstanding. Now I could move around. The  
20 testimony of Officer Hill was that she moved from the driver to  
21 the passenger seat. So I assume that that was the extent of her  
22 movement.

23 In an attempt to try and see more clearly with the  
24 binoculars, I actually probably did more motion than she  
25 described, to try and get the best view I could. And it was

1 difficult to see, mostly because of the obstruction.

2 Now, if you had taken the obstruction away, I don't  
3 know what I would have been able to see because you can't really,  
4 it's an imagination trick to try and do that. But that was the  
5 problem, is I couldn't. So I don't know what I could have seen,  
6 to be honest with you. All I could see is trees and leaves.

7 Q But we also tried to look at -- we parked a vehicle in the  
8 street at the south end of Kenwood, correct?

9 A Um-hum.

10 Q And when you looked through the binoculars, could you see  
11 the vehicle?

12 A From the south end of Kenwood?

13 Q You're at the north end of Kenwood, where Detective Hill  
14 was. My question is, could you see with binoculars the vehicle  
15 parked in the approximate location?

16 A Yes.

17 Q You could see it?

18 A If your question is could I see the vehicle, the answer  
19 would be yes.

20 Q Could you see clear? I don't want to cut you off. But to  
21 be clear, the vehicle we're talking about is parked where?

22 A Yes. We should be clear about that. The vehicle was parked  
23 in the place that we understood where Mr. Martin's vehicle had  
24 been parked, which was just south of the alley that we referred  
25 to throughout the motions hearing.

1 Q And, to be clear, you could see somebody getting in and out  
2 of that car from the driver's side, correct?

3 A Yes, definitely.

4 Q Did you have a chance to -- going to that vehicle. Why,  
5 again, did we park the vehicle where we did?

6 A The testimony last Friday was that the car parked by Mr.  
7 Martin, the '94 Lincoln Mark VII, was in that position, which was  
8 just south of the alley, that cuts through there off of North  
9 Kenwood.

10 Q Now, did we re-create people, a person coming out of Number  
11 Seven and heading to that car?

12 A Yes, we did.

13 Q Why did we do that?

14 A Well, there was testimony, some of it at variance, about the  
15 movements of Mr. Jeter moving towards Mr. Martin's car parked  
16 there, again, south of the alley. And what we were attempting to  
17 do is to try and establish, as best we could, the distance, first  
18 of all, and then the time it would take to cover the distance  
19 from Seven North Kenwood to the car.

20 Q And were we able to measure the distance between Seven North  
21 Kenwood and where the car was parked?

22 A Yes, we were.

23 Q And how far was it?

24 A Well, not being as precise as to exactly where the car was,  
25 but it was approximately 80 feet to that particular area.

1 Q And what was the re-creation that we did with respect to the  
2 lengths, distance from Seven to the car?

3 A Well, what we wanted to do was try and figure out how long  
4 it takes to cover that distance, that 80-foot distance. So we  
5 decided to try and videotape it. Someone, as it turns out it was  
6 you, running from the steps of Seven North Kenwood to the car  
7 itself. And to be, well, to attempt to be as fair as we possibly  
8 could, we tried to do it at as many speeds as we could. So  
9 walking, walking fast, walking and then breaking into a run,  
10 which I think at some point was testimony of one of the officers.  
11 I can't recall which. And then a flat-out sort of sprint, just  
12 to, and again, hopefully to help the Court just arrange.

13 We don't know exactly how fast he was moving. It's  
14 hard to describe that kind of thing. But we knew that he covered  
15 the distance. So we did it as fast as we could and then we did  
16 it at a normal walking pace, to just find a range of time.

17 Q Showing you Exhibit 20. Who's that guy?

18 A Well, shady character, but that's you. And that's you  
19 running towards the car parked in the position that we understood  
20 Mr. Martin's '94 Lincoln Mark VII to be. And these, I think we  
21 took six of these, again, trying to vary pace. That's a slow jog  
22 there.

23 And we were also trying to establish how fast, once he  
24 was in the car, as well. That seemed to be an important fact.  
25 This is you running about as fast, I think, as you can run.

1 Q And how long did it take to make that run?

2 A Well, again, we were trying to establish a range. And the  
3 fastest that we were able to do it, or you were able to do it, I  
4 should say, was a little over 6 seconds. And the slowest was a  
5 little over 14 seconds.

6 Q And that's going to the car, opening the door, and sitting  
7 down, correct?

8 A Yes. That is correct. Now, Your Honor should know when we  
9 timed it, we tried to time it off the video. So the video would  
10 show the times. And that's how those times were arrived at.

11 Q Now, you also took your investigator car over to Streeper  
12 Street, right?

13 A Yes, sir.

14 Q And why did you do that?

15 A Well, again, based on testimony that we heard last week, we  
16 were trying to establish, again, within certain ranges and  
17 parameters, how long it would take to drive from approximately  
18 mid-block on Streeper, up Streeper to Baltimore, turning right  
19 onto Baltimore, and then turning right and pulling in behind  
20 where we believed Mr. Martin's car was on North Kenwood.

21 And again, we wanted to try, we tried to do this with  
22 all possibilities in mind, as fast as we could. You know, we  
23 don't know what the traffic conditions were. We don't, we didn't  
24 know, I didn't hear any testimony as to whether or not police  
25 officers were actually parked at the curb or whether they were



1 just stopped, you know, mid block.

2 So we tried to do it -- the first one will be where  
3 we're parked at the curb and pull out. All the other ones are  
4 with the government car in the middle of the street and then  
5 pulling directly up.

6 Q I'm showing you Exhibit 20 again. This is what?

7 A This is the beginning of us pulling out. Again, we're  
8 parked on the curb, the right-hand curb. It was hard to find  
9 parking spots, for one thing. So we came up, parked, and then  
10 moved. And we're driving at a reasonable rate of speed. We're  
11 probably not driving, you know, very fast. There is one where we  
12 went as fast as we could. But this one is at a normal rate of  
13 speed.

14 And then we have to allow for traffic. This is the  
15 right turn onto Baltimore Street. And we're coming up here onto  
16 Kenwood. And we're turning right on Kenwood.

17 Q Now, you did a number of these, correct?

18 A I think we did six of this as well.

19 Q And it seems on each one you slowed down at the end of  
20 Streeper Street. Why did you slow down at the end of Streeper  
21 Street?

22 A It was two reasons. One is traffic. And the second is that  
23 Sergeant Davis's testimony indicated -- and I think this is an  
24 actual phrase that he used -- he said he eased in. My  
25 understanding of that was that he eased into traffic on Baltimore

1 Street. And then I think his other phrase was that he pinched  
2 up, which I took to mean that he pulled in directly behind Mr.  
3 Martin's car. And so -- and the Court can see now that -- this  
4 is a little faster.

5 So we're, again, we're trying to find a range. We're  
6 trying to be fair because we, we weren't there. We don't  
7 understand exactly how fast they were going. But again --

8 Q And in timing these -- you did time these, correct?

9 A We did. Again, we did the same thing that we did with the,  
10 the first reenactment, which is that we timed it off of the  
11 videotape.

12 Q And what was the time range that you came up with, the  
13 average between Streeper Street and pulling up behind the car?

14 A Right. As I recall, the longest was the one where we were  
15 parked. And it took a little bit longer because we had to pull  
16 out. It took us a little bit of time. That was 34 seconds. A  
17 little bit more than 34, I think. The fastest we were able to do  
18 it was a little over 21 seconds.

19 Q Now, one of these -- you did another reenactment, correct,  
20 involving me?

21 A Yes.

22 Q And --

23 A Well, right. Yes, we did. Can I explain that?

24 Q Yes, please.

25 A What we were attempting to do, Mr. Hurson and I were in cell

1 phone contact. And at the signal, which was given by Mr. Hurson,  
2 Mr. Hurson would, started on the steps of Seven North Kenwood.  
3 And he would say "Go." At that point, we would start driving up  
4 Streeper. And Mr. Hurson would start moving towards the car,  
5 what would be Mr. Martin's car. And we would attempt to try --  
6 you know, the game of it was we were trying to catch Mr. Hurson  
7 outside the car and see how fast we could. So we're moving at,  
8 as fast as we could. That was what we were trying to do, is to  
9 move so fast that Mr. Hurson would be outside the car.

10 Q And that's this video here, correct?

11 A Yeah. That one -- there was two, we made two tries. That  
12 was one. That last one was one of them.

13 Q And every time you pulled up, where was I?

14 A You were sitting in the passenger seat of the reenactment  
15 car.

16 Q And on the videos, so the judge is clear, you say "Go, Go,  
17 Go", right, if you listen to the audio, is that right?

18 A Right. Right. It was trying to, we were trying to go fast.

19 Q Before we leave, what did you observe in and around the area  
20 of Seven North Kenwood on Wednesday vis-à-vis people, cars? What  
21 was the area like?

22 A Well, yeah. I was surprised there was a lot of pedestrian  
23 traffic there. And, obviously, the Court can see there were a  
24 number of cars parked on Kenwood. There are a number of cars  
25 parked on Streeper as well. It was hard to find a parking spot

1 on Streeper to do the reenactment we wanted to do.

2 So I was curious about that. So I asked the postal  
3 worker who just happened to be there, Cheryl Jencks. I said, is  
4 this, do you usually deliver mail at this time every day? She  
5 says, "Yes." And I said, "Is it always like this?" And she  
6 said, "Not really. It's like this on Wednesdays because the  
7 school" -- I should have asked her the name of the school, but I  
8 didn't. But there's a school on the corner of, I think it's  
9 Belnord and Fairmount. And what she explained to me is they had  
10 an early dismissal. And as we were talking, we pulled someone in  
11 who was walking by, who turned out to be a parent of a child that  
12 attended that school, and she told us that the early dismissal  
13 time on Wednesdays was at 1:30.

14 Q So did you come to have a chance to examine a Mark VIII  
15 vehicle?

16 A '94 Lincoln Mark VIII, which was, as I understood, the  
17 make, the year, make and model of the car that Mr. Martin was  
18 driving.

19 Q And how did you come to find a 1994 Mark VIII?

20 A Well, first of all, the first thing we did was we ran the  
21 license number at MVA and try and figure out, make sure that we  
22 had the right make, year, and model. And that was, in fact,  
23 true.

24 Then the testimony from Mr. Martin was that the car  
25 had, was in the impound lot. So we went to the impound lot to

1 actually try and find the actual car. When we got there, we were  
2 told by the detective on duty that the car had been auctioned off  
3 and was no longer on the lot.

4 Then we started trying to find, you know, a '94 Lincoln  
5 Mark VIII. And it said '94. So it's a 20-year-old car. There  
6 are not many of them. But we found one for sale through  
7 cars.com. And I called the seller of it, who was in Edgewater,  
8 Maryland. I arranged to go down there and meet him with the car.  
9 We met at, maybe you can see it, the parking lot of a restaurant.  
10 And I proceeded to examine the car.

11 Q And did you take some pictures and video of that  
12 examination?

13 A Yes.

14 Q And showing you, again, Defendant's 20. What's this?

15 A This is some video, I think -- yup -- it's video I took of  
16 the car. The reason I'm doing it the way I'm doing it is because  
17 my understanding of the testimony of Sergeant Davis was that he  
18 approached the car from the back on the driver's side and moved  
19 along the quarter panel, and described seeing a sweatshirt being  
20 thrown from the front to the back seat, the sweatshirt hitting  
21 the back seat, and a gun falling from the sweatshirt on to the  
22 floor below.

23 My reasons for going there was to see how easy or hard  
24 it was to actually do that from that position.

25 Q And you took some pictures as well?

1 A Yes.

2 Q I'm going to show you -- can I get the document camera back?  
3 Thank you. I'm showing you Defendant's 13. Did you take this  
4 picture?

5 A Um-hum. Yes, I did.

6 Q And what is it a picture of?

7 A It's a picture of the -- well, it's a '94 Lincoln Mark V, or  
8 Mark VIII -- I'm sorry -- that was being sold or trying to be  
9 sold, anyway.

10 Q And Defendant's 14.

11 A Yes. I took that. Same, same car.

12 Q Defendant's 15.

13 A Yes. Same car.

14 Q Defendant's 16?

15 A Yes. Well, this is a different view. I've moved up, up the  
16 quarter panel. And I'm shooting into the car to try and really  
17 memorialize what I could see. Now, you should know that I'm  
18 holding the camera at my eye level, when I'm about five-nine.

19 Q Defendant's 17.

20 A Same car, different view. I've moved up maybe a step or  
21 two. And I'm looking, again, from my eye level down into the  
22 car.

23 Q And Defendant's 18. Two more after this.

24 A Yep. Same, same car. I've moved up again. You can see,  
25 you can extrapolate. I'm probably a little bit in back of the

1 back window shooting into the car again.

2 Q And why are you approaching on the driver's side?

3 A That was the testimony of Sergeant Davis last Friday.

4 Q And Defendant's 19?

5 A Yes. I've moved back a little bit from the last photograph.  
6 But it's the same car, again trying to look into the car.

7 Q There's 19-A. What's that?

8 A Right. That's me. Now I've moved up. I'm about parallel  
9 to the back. It's a two-door car and it has a small back win --  
10 back window's not the word I want to use. It's a triangular  
11 window for the passenger of the back seat. And that's what you  
12 see there on the right. I'll touch it there. And looking in  
13 and, again, I'm at eye level, looking down into the car itself.

14 Q Could you see the floor behind the passenger or driver's  
15 side at any point?

16 A Well, you can see the floor if you get right up on top of  
17 the car and you're right by that triangular window, you can see  
18 it. The farther back down the quarter panel you go, the harder  
19 it is to see. The angle, one -- there's a couple reasons for  
20 that. One is the angle decreases. It's harder to see down  
21 there. And the other thing is that the car, there's an  
22 obstruction there where the roof of the car comes down and meets  
23 the body. And it's hard to see around that.

24 Q No further questions.

25 THE COURT: All right. Thank you, Mr. Hurson. Mr.

1 Hoff.

2 CROSS EXAMINATION

3 BY MR. HOFF:

4 Q Just briefly, Your Honor. I'm showing you Defense Exhibit  
5 -- I'm sorry. This is Number 10, correct?

6 A Yes.

7 Q And you took this picture?

8 A I'm not sure.

9 Q And there's some vehicles in the road down by where you  
10 indicated Seven North Kenwood is, correct?

11 A Up the block on Kenwood?

12 Q Yes.

13 A Yes.

14 Q And Defense Exhibit Number 11. That's essentially the same  
15 angle and picture as Number 10, correct?

16 A Yep. Yes.

17 Q And there's less cars in front of the area of Seven North  
18 Kenwood in this picture, correct?

19 A I think you're right. Can you show me the first one again?  
20 Yeah. Looks like there's a car present in Exhibit 10 that wasn't  
21 in the other one, whichever one it was you showed me.

22 Q Exhibit Number 11?

23 A Yup. You can tell that there's one car missing that was  
24 there in 10. It's not in 11.

25 Q And, in fact, I believe your testimony was -- there was



1 numerous mentions made to obstructions and foliage. But I  
2 believe your testimony was, with the obstructions away, you don't  
3 know what you would have seen, correct?

4 A Yeah. That's true.

5 Q I have no further questions, Your Honor.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION

8 BY MR. HURSON:

9 Q Were the cars blocking your view of the steps of North  
10 Kenwood?

11 A No. It was more the foliage that was blocking it. It was  
12 the foliage.

13 MR. HURSON: No further questions.

14 THE COURT: Okay. You may be excused. You can step  
15 back down. All right.

16 Mr. Hoff, in fairness, if you have anything that you  
17 want to present in rebuttal to that, obviously, I'll give you  
18 time to do it, now that you've, now that you've heard it.  
19 Otherwise, other than that, I think we'll be closing the record  
20 as far as evidence today.

21 What I talked to counsel about in our conference call  
22 last Wednesday was that I thought it would be helpful to have a  
23 transcript of the testimony in this particular case before I make  
24 a ruling. I still believe that. And we talked about, for that  
25 reason, and I guess perhaps because it's getting fairly close,

1 anyway, a possible postponement of the trial date.

2 Let me see if there have been any changes in the  
3 calendar since we talked. We had --

4 MR. HOFF: Your Honor, may counsel and I approach, just  
5 as far as a scheduling issue?

6 THE COURT: Sure.

7 (Bench conference on the record.)

8 MR. HOFF: Your Honor, I talked to Mr. Hurson this  
9 morning. And I know that we kind of discussed a tentative date  
10 of December 15th.

11 THE COURT: Yes.

12 MR. HOFF: I guess I was a little optimistic on my part  
13 probably because, I did discuss that, I am going to be out for  
14 the birth of a child.

15 THE COURT: Sure.

16 MR. HOFF: The beginning of December is not good. I  
17 also have another trial scheduled the week before that. So I  
18 just don't think it's realistic, probably, on my part to assume  
19 that I would be able to even do that.

20 So I did discuss that with Mr. Hurson. We did discuss,  
21 if possible, a date in January probably would make more sense.

22 MR. HURSON: That's fine. I haven't talked to Mr.  
23 Jeter but he'll understand. If anything opens up in October or  
24 November, that would obviously be ideal.

25 THE COURT: Well, maybe, in light of this, it makes

1 more sense for us to have a conference call next week.

2 MR. HURSON: That's fine.

3 THE COURT: And perhaps at the same time, if you want,  
4 you can determine whether there's any rebuttal that you want to  
5 present, and how long it will take to get the transcript, and  
6 when we can set some dates, particularly if there's any  
7 supplemental briefing anybody wants to do based on the  
8 transcript, and talk about a trial date.

9 MR. HOFF: Okay. Just to be clear, the October 6th  
10 date, we are not going --

11 THE COURT: We are going to postpone the October 6th  
12 date. Yes.

13 MR. WALLNER: I believe Mr. Hurson already requested  
14 the transcript on a seven-day turnaround, so we should have that  
15 before that time.

16 MR. HURSON: Hopefully. We ordered it. Everyone's  
17 paying for it.

18 THE COURT: That's fine. Presumably you'll wanted  
19 today's testimony as well.

20 MR. HOFF: Yes.

21 THE COURT: All right. Why don't we just have a  
22 conference call?

23 MR. HURSON: I ordered it when we were still going to  
24 trial on the 6th. I think I ordered it right after we left  
25 court.

1           THE COURT: Actually, why don't we have the conference  
2 call on the morning of October 6th? Let's say 9:30?

3           MR. HOFF: That's fine.

4           THE COURT: And if the government could initiate the  
5 call.

6           MR. HOFF: Certainly, Your Honor.

7           MR. HURSON: I forgot to give Mr. Jeter an earpiece.  
8 I'll tell him the substance of what we just talked about.

9           THE COURT: Yes. I think it's only scheduling.

10          MR. HURSON: Just so the record's clear.

11          THE COURT: Yes. Thank you. And let me know if he has  
12 any difficulties with what we've just discussed.

13          MR. HURSON: I will. I was going to summarize some of  
14 the discovery issues that came up on Friday. I can do that here  
15 or we can do that in open court. Might be better to do it in  
16 open court.

17          THE COURT: Yes. That's fine.

18          (End of bench conference.)

19          THE COURT: Yes. Just to summarize what we've just  
20 said at the bench, was that we're going to have a conference call  
21 the morning of October 6th, at 9:30 in the morning; that we are  
22 not going to trial on October 6th. We'll have a conference call.  
23 I asked the government to initiate it.

24          During the conference call we'll discuss the status of  
25 the transcript that's been ordered, what dates might be available

1 to put this in for trial, and if the government feels the  
2 necessity to present any rebuttal to what the defendant presented  
3 today.

4 And you had some other issues you wanted to discuss,  
5 Mr. Hurson?

6 MR. HURSON: Yes, Your Honor. At the hearing on  
7 Friday, as you pointed out earlier, a lot of new things were  
8 learned. One of them is that some phone calls were placed by the  
9 confidential source and his girlfriend to the Internal Affairs  
10 Division of the Baltimore City Police Department. Those calls, I  
11 tried to subpoena them before I even had anything. They had  
12 already been provided to the government, who's since provided  
13 them to us.

14 THE COURT: So you do not need a subpoena for --

15 MR. HURSON: I don't need them for that any more.

16 THE COURT: -- IID.

17 MR. HURSON: I mean, I assume that we got the complete.  
18 I usually trying to subpoena them, anyway, just to make sure I  
19 got exactly what's there, everything that's there. What I did  
20 not get, and I don't even know if it even exists, is whether  
21 there was a file opened or any sort of investigation done. I can  
22 tell Your Honor what the call contains.

23 The first call is from someone who purports to be a  
24 friend of someone. And that someone we have to assume is Mr.  
25 Martin. And what she is saying is that he was arrested, the

1 friend, without probable cause and -- in her view, again. I'm  
2 not saying --

3 THE COURT: Sure.

4 MR. HURSON: And what she says is that he was then told  
5 he has to get a gun or he's going to get charged. And he says --  
6 she says on the tape that she was privy to a conversation. She  
7 was present when an officer called her friend and threatened him,  
8 using foul language, that he has to produce or else he's going to  
9 go to jail. Can they do that? Is that legal? That was, in  
10 essence, the first call.

11 And the officer says, you know, he's going to have to  
12 call himself, and have him call back.

13 The second call that was produced is likely Mr. Martin.  
14 I assume it is. I don't know if he uses his name or not. But he  
15 says, basically, he's inquiring the same thing. He says, I got  
16 arrested yesterday. Can they still charge me if I do what they  
17 want? She's very, I don't want to say, bombastic. She's angry.  
18 He's far more low key. I think that's the sum and substance of  
19 the calls.

20 The call with him and Internal Affairs ends about three  
21 or four minutes later. There is a conversation that what police  
22 can do and can't do. They tell him they can open a, they can  
23 turn him into a confidential informant. They basically explain  
24 the process.

25 I got to say, from the tone of the calls, it doesn't

1 sound like they launched any investigation. It doesn't sound  
2 like anybody wrote anything down at all. I don't know, though.  
3 And so that's one of the things I think we would be entitled to.  
4 And I haven't talked to the government about whether there is  
5 such a thing in existence. But if it's out there, I would like  
6 it.

7 I think one of the other things we talked about --

8 THE COURT: Well, let me just stop with that and see --

9 MR. HURSON: Sure.

10 THE COURT: -- Mr. Hoff, if you would mind inquiring,  
11 or maybe you already have.

12 MR. HOFF: I already have. And Mr. Hurson's correct in  
13 kind of Mr. Martin's calling. They do say, "Are you making a  
14 complaint?" And he says no. And then I did follow up, though,  
15 to see if anything had, if there was an investigation opened or  
16 if there was anything pending. As far as what they had, what  
17 they told me last week was there was no investigation in relation  
18 to those phone calls. I think that is because, on the phone  
19 call, Mr. Martin did indicate he was not making a complaint.

20 So I did follow up on that. There is no investigation  
21 in relation to those phone calls.

22 THE COURT: Okay.

23 MR. HURSON: The other issue that came up on Friday was  
24 that Mr. Martin had apparently made attempts to get firearms from  
25 two other people. He testified two other people. I had asked

1 him who those people were and I think that -- there was an  
2 objection. I know there was an objection. I think Your Honor  
3 had instructed the government to get those names. I don't think  
4 you instructed the government to give them to me. I thought you  
5 had. But Mr. Hoff and I talked about it. It's probably more  
6 likely you just instructed him to get the names.

7 But I think I'm entitled to those names. I haven't  
8 briefed the issue as to why I'm entitled to those names.

9 It seems clear, I think, I think I might be able to  
10 figure out who one of them is just based on investigation,  
11 because of the marijuana arrest. Actually, I'm not sure, because  
12 that leads to the next point, which is a search warrant affidavit  
13 that was apparently done by Detective Clark. So I'm making  
14 things way more confusing than I need do.

15 The testimony from Detective Clark, as I remember it,  
16 was that there was another operation involving Mr. Martin on the  
17 22nd but -- and I'm coloring it as Mr. Wallner would, I'm  
18 editorializing -- but he didn't have much to do with it, is what  
19 I remember him saying. Our understanding is, from the  
20 government, that there was a search warrant affidavit authored  
21 based on whatever happened on the night of the 22nd involving Mr.  
22 Martin. And I have to assume that what they're talking about is  
23 what Mr. Martin talked about, which was when he actually went to  
24 another residence, entered that residence with the intention of  
25 getting a gun, and marijuana, but was only able to get marijuana.



1 I think you remember that testimony.

2 THE COURT: Yes.

3 MR. HURSON: He, of course, testified he was in  
4 constant contact with Detective Clark. My understanding is  
5 there's a search warrant affidavit that came out of something Mr.  
6 Martin did that night. I don't know who authored it. I'm  
7 assuming it was Detective Clark, but I could be wrong. And I'm  
8 also assuming it had something to do with that operation that he  
9 testified to, but I don't know.

10 What I do know is the government informed me there is a  
11 search warrant affidavit. And I think, based on all the  
12 testimony that came out and, again, I haven't briefed it, that we  
13 should get a copy of that. I don't even know if it remains  
14 sealed.

15 I think there was testimony that there was a marijuana  
16 arrest. But I don't know the defendant.

17 THE COURT: Okay.

18 MR. HURSON: And I think we should get that.

19 THE COURT: Mr. Hoff.

20 MR. HOFF: Well, Your Honor, the government's position  
21 is certainly that that information is privileged. As far as the  
22 CI's involvement in any investigation for other individuals is,  
23 or who the government is investigating in relation to other  
24 individuals for a confidential informant, certainly, it's never  
25 been, in my experience, that all, any and all cases related to a

1 confidential informant involved in or relative to a particular  
2 case, I think that it's the government's position that that's  
3 privileged information as far as the CI's involvement in other  
4 investigations. And certainly with respect to the search  
5 warrant, that would be the same position, Your Honor.

6 THE COURT: Okay. Well, I'm not, I'm not prepared to  
7 resolve it this minute. I think in general, Mr. Hoff, I might  
8 agree with you if there was some other completely unrelated  
9 investigation the CS was involved in. This is a little closer  
10 because it involves events about which Mr. Martin testified.  
11 They were also a part of this process of getting to Mr. Jeter.  
12 You know, maybe you all can continue to talk about it a little  
13 bit. If there's maybe some redacted version that can be turned  
14 over.

15 But if you don't, if you wind up not agreeing on this,  
16 then, Mr. Hurson, I guess I'll have to ask that it be briefed,  
17 and the government can respond. If I need to look at some  
18 documents in camera, I can do that.

19 MR. HURSON: If I may. My position is I don't know if  
20 the search warrant really is something that comes out of an  
21 earlier investigation. But I think the testimony was clear that  
22 it was, he signed up on the 22nd and he finished his service on  
23 the 23rd.

24 THE COURT: Right.

25 MR. HURSON: And I think for purposes of impeachment of

1 Detective Clark at trial, the testimony from Detective Clark was:  
2 I didn't have anything to do with anything. Again, it's getting  
3 better in my mind as time goes on.

4 But the point is, if he really did author a search  
5 warrant, I think the Court needs to know if he was the author.  
6 And I am happy to be subject to any sort of confidentiality,  
7 protective orders, even just for attorney's eyes only. That's  
8 okay. But I can't really properly argue why I feel I'm entitled  
9 to it if I don't even know necessarily what it is.

10 THE COURT: Mr. Hoff, do you know who authored the  
11 affidavit?

12 MR. HOFF: Yes, Your Honor. It was Detective Clark.

13 THE COURT: Well, Mr. Hurson's argument is getting  
14 stronger. You might want to think about it. Again, if you can't  
15 come to some agreement -- again, I don't have a transcript in  
16 front of me, either. I recall Detective Clark eventually, when  
17 asked on cross, did recall that. My recollection is that there  
18 was another officer that we didn't hear from that was sort of the  
19 main person on that part of the investigation. But I don't know  
20 how it then happened that Detective Clark wrote the affidavit.  
21 Maybe based on information from someone else.

22 So the argument that's being made is credibility.  
23 Let's focus on that. Again, if you can't come to some agreement,  
24 let's get it briefed quickly.

25 MR. HOFF: Yes, Your Honor.

1 THE COURT: Anything else.

2 MR. HOFF: The only other thing I wanted to ask Your  
3 Honor, as far as the IAD records, does Your Honor -- the  
4 government has obtained those records. So I am in the process of  
5 I guess preparing a summary for Your Honor.

6 THE COURT: Okay.

7 MR. HOFF: Is there a timeline that Your Honor would  
8 like those in chambers?

9 THE COURT: Well, obviously, we do have a little bit of  
10 time. I mean, is a week enough? What's your -- what do you  
11 need?

12 MR. HOFF: That would probably be enough, Your Honor.  
13 Could I, I guess could I submit them to the Court on the October  
14 6th date, the date of the conference call?

15 THE COURT: Sure.

16 MR. HOFF: Thank you.

17 THE COURT: That should be fine. I mean, that's  
18 before, certainly before, obviously, I'm going to make any  
19 ruling. And it's well before trial. So if I find that there is  
20 information that should be disclosed to Mr. Hurson, we can take  
21 it up.

22 MR. HOFF: Thank you, Your Honor.

23 MR. HURSON: Thank you. I think that's it.

24 THE COURT: All right. That's fine, then. Thank you  
25 very much. And I will talk to you at least on October 6th at

1 9:30.

2 MR. HOFF: Thank you, Your Honor.

3 THE COURT: Thank you.

4 (Conclusion of Proceedings at 10:58 a.m.)  
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REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of USA v. Arthur Jeter, Case Number(s) CCB-14-121, on September 19, 2014.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my  
signature this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Mary M. Zajac,  
Official Court Reporter

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